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Chapter 11 Trustee for the Bankruptcy Estate of

8 The Litigation Practice Group PC

9  
10 **UNITED STATES BANKRUPTCY COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION**

12  
13 In re:

14 THE LITIGATION PRACTICE GROUP P.C.,

15 Debtor.

Case No.: 8:23-bk-10571-SC

Chapter 11

16 **NOTICE OF CHAPTER 11 TRUSTEE,**  
17 **RICHARD A. MARSHACK'S NOTICE OF**  
18 **MOTION AND MOTION FOR ORDER**  
19 **APPROVING COMPROMISE OF**  
20 **CONTROVERSY PURSUANT TO**  
21 **FEDERAL RULE OF BANKRUPTCY**  
22 **PROCEDURE 9019 AS TO DEFENDANT**  
23 **PAYLIANCE, LLC; MEMORANDUM OF**  
24 **POINTS AND AUTHORITIES**

21 Date: September 11, 2024

22 Time: 1:30 p.m.

23 Judge: Hon. Scott C. Clarkson

24 Place: Courtroom 5C –ViaZoom<sup>1</sup>

411 West Fourth Street

Santa Ana, California 92701

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27  
28 <sup>1</sup> Check Judge Clarkson's tentative calendar prior to hearing for further Zoom instructions.

**TO THE COURT, HONORABLE SCOTT C. CLARKSON, OFFICE OF THE  
UNITED STATES TRUSTEE, DEFENDANTS, AND ALL INTERESTED PARTIES:**

Plaintiff Richard A. Marshack, in his capacity as the Chapter 11 Trustee (“Trustee”) of the Bankruptcy Estate (“Estate”) of The Litigation Practice Group P.C. (“Debtor” or “LPG”) hereby submits his Notice of Motion and Motion for Order Approving Compromise of Controversy Pursuant to Federal Rule of Bankruptcy Procedure 9019 (the “Motion”), supporting Memorandum of Points and Authorities, the Declarations of Richard A. Marshack (“Marshack Decl.”), Jeremy B. Freedman and (“Freedman Decl.”), and Toni Richins (“Richins Decl.”) on behalf of Payliance, LLC (“Payliance”).

**PLEASE TAKE NOTICE THAT**, on August 20, 2024, Chapter 11 Trustee, Richard A. Marshack (“Trustee”), filed a Motion for Approval of a Settlement Agreement with Defendant Payliance, LLC (“Payliance”) under Federal Rule of Bankruptcy Procedure 9019 (the “Motion”) and hereby moves for an order that finds and directs as follows:

1. The Motion is granted;
2. Notice of the Motion is adequate and proper;
3. The Court reserves jurisdiction to determine any dispute arising in connection with the Proposed Settlement; and

4. The Motion is made pursuant to Section 105 of Title 11 of the United States Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure on the grounds that, in Trustee’s sound business judgment, the Proposed Stipulation is in the best interests of the consumer clients, the Estate and all creditors, including consumer creditors. (Richard Marshack Declaration ¶¶ 7-8.) As a result, Trustee seeks Court approval of the proposed compromise of claims as against Payliance, the salient terms of the Settlement Agreement (“Agreement”) are summarized as follows:

- (a) As of the Effective Date, Payliance may recoup, set off, or otherwise retain and apply funds in the Reserves to satisfy and pay the Payliance Claim to the extent that it is liquidated as of the Effective Date, and the automatic stay provided for under section 362(a) of the Bankruptcy Code, to the extent applicable, shall be modified solely to

1 permit such recoupment and/or setoff, but shall otherwise remain in effect for all  
2 purposes.

3 (b) Payliance is entitled to a compromised indemnification claim totaling \$59,000  
4 (“Compromised Indemnity Claim”) from the LPG Reserve for attorney’s fees and  
5 costs pursuant to The Litigation Practice Group, PC’s service contract related to this  
6 Adversary Proceeding and LPG’s bankruptcy matter.

7 (c) Promptly following the Effective Date, and following its recoupment and applications  
8 of funds, Payliance shall release and pay over to the Trustee any and all funds  
9 remaining in the Reserves, approximately \$582,460, less the Compromised Indemnity  
10 Claim, which provides a total of \$523,460 held in the accounts of The Litigation  
11 Practice Group, PC, Guardian Processing, PC and Greyson Law Center, PC payable  
12 to the Debtor’s Estate, of which \$453,570 is free of liens.

13 (d) The Trustee shall file a Notice of Dismissal pursuant to Federal Rule of Bankruptcy  
14 Procedure 7041(a)(1)(A)(i) within 5 business days after Payliance’s release of funds  
15 to the Trustee, dismissing with prejudice all claims against Payliance.

16 (e) The Bankruptcy Court shall retain jurisdiction to enforce and construe the terms and  
17 provisions of this Agreement. The Bankruptcy Court shall further retain jurisdiction  
18 to enforce and construe any and all applicable terms or provisions of the Court’s  
19 Preliminary Injunction (Adversary Proceeding No. 8:23-ap-01046-SC, Dkt. No. 70),  
20 including any and all applicable changes or modifications subsequently made so long  
21 as the Preliminary Injunction remains in place and has not been vacated by Court  
22 order.

23 Also, according to the Agreement, Payliance may recoup, set off, or otherwise retain and  
24 apply funds in the Reserves to satisfy and pay the Payliance Claim to the extent that it is liquidated  
25 as of the Effective Date, and the automatic stay provided for under section 362(a) of the Bankruptcy  
26 Code, to the extent applicable, shall be modified solely to permit such recoupment and/or setoff, but  
27 shall otherwise remain in effect for all purposes. Following its recoupment and applications of funds,  
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1 Payliance shall release and pay over to the Trustee any and all funds remaining in the Reserves. In  
2 return, the Trustee will dismiss with prejudice any and all claims against Payliance. The Agreement  
3 also contains mutual releases of any and all claims of or between the parties to the Agreement.

4 **NOTICE IS FURTHER GIVEN** that a hearing to consider the Motion will take place before  
5 the Honorable Scott C. Clarkson in Courtroom 5C of the United States Bankruptcy Court, located at  
6 411 West Fourth Street, Santa Ana, California 92701, on **September 11, 2024 at 1:30 p.m.**

7 **PLEASE TAKE FURTHER NOTICE** that, pursuant to LBR 9013-1(f), any response or  
8 opposition to the Motion must be (i) in writing and include a complete written statement of all reasons  
9 in opposition thereto or in support or joinder thereof, declarations and copies of all photographs and  
10 documentary evidence on which the responding party intends to rely and any responding  
11 memorandum of points and authorities, and (ii) filed with the Court and served on the Trustee, counsel  
12 for the Trustee, the Debtor, and the United States Trustee no later than 14 days prior to the hearing  
13 on this Motion.

14 **NOTICE IS FURTHER GIVEN** that written opposition to the Motion must be filed with  
15 the Court no later than **August 28, 2024.**

16 **NOTICE IS FURTHER GIVEN** that this Motion is based upon (a) this Notice of Motion  
17 and Motion, (b) the attached Memorandum of Points and Authorities, Declarations of Richard  
18 Marshack, Jeremy B. Freedman, and Toni Richins on behalf of Payliance, LLC, and Exhibits thereto,  
19 (c) the concurrently filed Notice of Motion and Hearing, (d) the arguments of counsel, if any, in  
20 support of the Motion at the hearing thereon, (e) the entire record of this Case, and (f) any other  
21 evidence presented to the Court in support of the Motion.

22 **PLEASE TAKE FURTHER NOTICE** that any party wishing to appear at the hearing  
23 should review the Court's tentative ruling prior to the hearing, which will provide information on  
24 whether in-person appearances are required and any remote access information for the hearing on the  
25 Motion. Parties are directed to obtain accessibility information on Judge Clarkson's posted hearing  
26 calendar which may be viewed online at: <http://ecfciao.cacb.uscourts.gov/CiaoPosted/?jid=SC>.

1       **PLEASE TAKE FURTHER NOTICE** that, pursuant to LBR 9013-1(h) the failure to file  
2 and serve a timely response to the Motion or request a hearing on the Motion may be deemed by the  
3 Court to be consent to the granting of the relief requested in the Motion.

4  
5 Dated: August 20, 2024

Respectfully submitted,

6 DINSMORE & SHOHL LLP

7 By: /s/ Jeremy B. Freedman

8 Christopher B. Ghio

9 Jeremy B. Freedman

10 Special Counsel to Richard A. Marshack

11 Chapter 11 Trustee for the Bankruptcy Estate  
12 of The Litigation Practice Group PC  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

By this Motion, Trustee seeks the Court’s approval of a Settlement Agreement (the “Agreement”) with Payliance, LLC for the return of The Litigation Practice Group, PC (“Debtor” or “LPG”) assets acquired both pre-petition and post-petition. The Agreement requires Payliance to release to the Trustee: 1) funds remaining in LPG’s Reserve (defined below); 2) ACH funds pulled post-petition through Guardian Processing, LLC (“Guardian”) on behalf of Oakstone Legal Group, PC (“Oakstone”); and 3) LPG assets deposited by Greyson Law Center, PC (“Greyson”) through BAT, Inc. dba Coast Processing (“BAT”) – an entity controlled by LPG and Tony Diab. The Agreement further grants limited relief from the automatic stay to allow Payliance to exercise rights to recoupment and/or set off for consumer client chargebacks for ACH transactions processed through Guardian pursuant to its service contract with Guardian. In Trustee’s sound business judgment, he believes approving the Agreement is in the best interests of the Estate and its creditors because it will satisfy the pre-petition claims of a significant creditor while providing for the recovery of Estate Property, both without the need for further litigation or ongoing review by this Court. (Marshack Decl. ¶¶ 6-8.)

**II.**

**BACKGROUND**

On March 20, 2023, Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Central District of California, initiating Case No. 8:23-bk-10571-SC.

On May 8, 2023, Richard A. Marshack was appointed as Chapter 11 Trustee of Debtor’s Bankruptcy Estate and assumed all authority to administer Debtor’s Estate in this case. (Bankr. Dkt. No. 65.)

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1 On May 25, 2023, Trustee filed his complaint for injunctive relief, fraudulent conveyance and  
2 turnover initiating Adversary Proceeding No. 8:23-ap-01046-SC (“1046 Action”) as to over forty  
3 defendants. (1046 Dkt. No. 1.) On June 15, 2023, Trustee amended the complaint and named  
4 Payliance as a defendant. (1046 Dkt. No. 62.)

5 Payliance performed payment processing services for the Debtor pursuant to a contractual  
6 agreement between the Debtor and Payliance dated December 13, 2021 (“Debtor ACH Client  
7 Agreement”). (Richins Decl. ¶ 3.)

8 The Debtor ACH Client Agreement (i) authorized and permitted Payliance to establish and  
9 maintain a reserve to cover certain of the Debtor’s obligations under their ACH Client Agreement,  
10 and also (ii) required Debtor to indemnify Payliance for any and all expenses, including attorneys’  
11 fees, arising (directly or indirectly) out of or related to their ACH Client Agreement (the “Debtor  
12 Reserve”). (Richins Decl. ¶¶ 3-4, Exh. 1.)

13 The Debtor’s Payliance Reserve was established *pre-petition* and currently holds  
14 approximately **\$98,890** in Debtor funds. (Richins Decl. ¶ 5, Exh. 2.)

15 Payliance also performed payment processing services for Guardian pursuant to an agreement  
16 between Guardian and Payliance dated March 2, 2023 (“Guardian ACH Client Agreement”).  
17 Guardian is named in both the 1046 Action and the Court’s Amended Temporary Restraining Order  
18 (“TRO”) (1046 Dkt. No. 21) and Preliminary Injunction Order (1046 Dkt. No. 70), requiring the  
19 turnover of Debtor’s pre and post-petition funds. (Richins Decl. ¶ 8, Exh. 3.)

20 The Guardian ACH Client Agreement (i) authorized and permitted Payliance to establish and  
21 maintain a reserve to cover certain of Guardian’s obligations under their ACH Client Agreement, and  
22 also (ii) required Guardian to indemnify Payliance for any and all expenses, including attorneys’ fees,  
23 arising (directly or indirectly) out of or related to their ACH Client Agreement (the “Guardian  
24 Reserve”). (Richins Decl. ¶ 8, Exh. 3.)

25 The Guardian Reserve was established *pre-petition* with Debtor funds and before the  
26 adversary proceeding was initiated and holds approximately **\$30,000** in funds. Guardian managed  
27 Oakstone Legal Group, PC’s (“Oakstone”) ACH transactions on LPG consumer client files  
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1 fraudulently transferred to Oakstone pre-petition in and around February and March 2023. As a result,  
2 Guardian Processing initiated ACH transactions on LPG's consumer client accounts post-petition  
3 between May 1, 2023 and May 31, 2023, totaling more than \$500,000. Since that time, Payliance has  
4 experienced a number of consumer client chargebacks and disputes that required the return of such  
5 funds. Taking into account the chargebacks, Payliance currently holds approximately **\$438,570** in  
6 Debtor funds as a result of post-petition ACH receivables in addition to the \$30,000 held in the  
7 Guardian Reserve. (Richins Decl. ¶¶ 9-10, Exh. 4.)

8       Greyson also established an account with Payliance to process ACH transactions pursuant to  
9 an agreement between Greyson and Payliance dated April 27, 2023 ("Greyson ACH Client  
10 Agreement"). Greyson is both a defendant in the 1046 Action and named party to the Court's TRO  
11 and Preliminary Injunction. (Richins Decl. ¶¶ 12-13.)

12       The Greyson ACH Client Agreement (i) authorized and permitted Payliance to establish and  
13 maintain a reserve to cover certain of Greyson's obligations under their ACH Client Agreement, and  
14 also (ii) required Greyson to indemnify Payliance for any and all expenses, including attorneys' fees,  
15 arising (directly or indirectly) out of or related to their ACH Client Agreement (the "Greyson  
16 Reserve"). (Richins Decl. ¶¶ 12-13.)

17       The Greyson Reserve was established prior to the adversary proceeding being initiated. The  
18 Greyson Reserve was funded on May 26, 2023, utilizing LPG funds held in BAT's Chase account  
19 ending in 0830. (1046 Dkt. No. 325-4, Exh. 8 at p. 95; Freedman Decl. ¶ 5, Exh. D). Pursuant to  
20 instructions provided by Revolv3 on behalf of Payliance, BAT wired \$15,000 in funds from the Chase  
21 account ending in 0830 to Payliance's Long Term Reserve account held by Collections Acquisition  
22 Company, Inc. at Wells Fargo. (1046 Dkt. No. 325-4, Exh. 8 at p. 92; Freedman Decl. Exh. E). Han  
23 on behalf of Greyson then wired the \$15,000 to the Collections Acquisition Company account. (1046  
24 Dkt. No. 325-4, Exh. 8 at p. 95; Freedman Decl. ¶ 5, Exh. D). BAT's Chase account was funded using  
25 LPG assets. Moreover, Tony Diab and Han Trinh (former CEO, CFO and director of BAT) admit  
26 that BAT was owned by Debtor and therefore any funds held by BAT were LPG assets. (1046 Dkt.

No. 493-11 at p. 12). Greyson’s Reserve holds approximately **\$15,000** in Debtor funds. (Richins Decl. ¶ 14, Exh. 6.)

On June 23, 2023, in the 1046 Action, the Court issued an order directing certain funds being held on behalf of the Debtor and certain related entities and individuals be “turned over” to the Trustee (the “Estate Funds”). (1046 Dkt. No. 70.)

Payliance has a claim against the Debtor’s Chapter 11 Estate Funds to the extent of any unpaid and/or unrecouped client refunds, chargebacks and ACH returns on transactions with, or indemnifiable expenses related to Guardian (the “Payliance Claim”).

The Payliance Claim is a secured claim to the extent of the Guardian Reserve.

The Service contract by and between Payliance, on the one hand, and The Litigation Practice Group, PC (“LPG”) on the other, provides for indemnification related to this Adversary proceeding and LPG’s bankruptcy matter. (Richins Decl. Exh. 1.) Based on the good faith negotiations of the parties, Payliance has agreed to compromise its claims as to the LPG Reserve for indemnification pursuant to said service contract in the amount of \$59,000 (“Compromised Indemnity Claim”). (*Id.* ¶¶ 6-7.)

The Parties wish to stipulate and agree to a limited and precautionary relief from the automatic stay, if and as necessary, to allow Payliance to exercise its right of recoupment and/or setoff in respect to the Reserve, to apply funds in the Reserve to cover its losses on pre-petition transactions by Debtor’s clients to date, and then to release any funds remaining in the Reserve to the Trustee as set forth in the Agreement.

### III.

#### **TERMS OF THE SETTLEMENT**

The salient terms of the Settlement Agreement attached to the Declaration of Richard Marshack, concurrently filed herewith as **Exhibit A**, are as follows:

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- 1 (a) The Agreement shall be effective on the date (the “Effective Date”) that the  
2 Bankruptcy Court enters a final order (i) approving the Agreement and (ii)  
3 finding that no party other than the Trustee has any right, title or claim to the  
4 funds remaining in the Reserves following the recoupment and/or setoff  
5 described in paragraph 2 (the “Settlement Order”). If any party objects to the  
6 Settlement Order, then the Settlement Order shall not be a final order until the  
7 time for appeal, or to seek permission to appeal from the Bankruptcy Court’s  
8 approval of this Agreement, has expired or, if appealed, the Settlement Order  
9 has been affirmed in its entirety by the court of last resort to which the appeal  
10 has been taken and has become no longer subject to further appeal or review.  
11 If no party objects to the Settlement Order, the Settlement Order will be final  
12 upon entry by the Bankruptcy Court. The Settlement Order shall be in a form  
13 and substance acceptable to both parties. The Trustee agrees to seek entry of  
14 the Settlement Order within a reasonable period of time following the  
15 execution of this Agreement by all Parties. (Exhibit A at ¶ 1.)
- 16 (b) As of the Effective Date, Payliance may recoup, set off, or otherwise retain  
17 and apply funds in the Reserves to satisfy and pay the Payliance Claim to the  
18 extent that it is liquidated as of the Effective Date, and the automatic stay  
19 provided for under section 362(a) of the Bankruptcy Code, to the extent  
20 applicable, shall be modified solely to permit such recoupment and/or setoff,  
21 but shall otherwise remain in effect for all purposes. (Exhibit A at ¶ 2.)
- 22 (c) Payliance is entitled to a compromised indemnification claim totaling \$59,000  
23 (“Compromised Indemnity Claim”) for attorney’s fees and costs pursuant to  
24 The Litigation Practice Group, PC’s service contract related to this Adversary  
25 Proceeding and LPG’s Bankruptcy matter.
- 26 (d) Promptly following the Effective Date, and following its recoupment and  
27 applications of funds as provided above, Payliance shall release and pay over  
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1 to the Trustee any and all funds remaining in the Reserves. Specifically,  
2 following the Effective Date, Payliance will return to the Trustee: the Debtor  
3 Reserve of \$98,890, less Payliance's claim to indemnification from the Debtor  
4 Reserve for \$59,000; the Guardian Reserve of \$468,570; and the Grayson  
5 Reserve of \$15,000. (Exhibit A at ¶ 3.)

6 (e) The Trustee shall file a Notice of Dismissal pursuant to Federal Rule of  
7 Bankruptcy Procedure 7041(a)(1)(A)(i) within 5 business days after  
8 Payliance's release of funds to the Trustee, dismissing with prejudice all  
9 claims against Payliance. (Exhibit A at ¶ 4.)

10 (f) Except for the obligations created by this Agreement, and in consideration of  
11 the execution and delivery of this Agreement, the Parties generally release and  
12 fully discharge each other, as well as their predecessors in interest, successors  
13 in interest, assignors, assigns, insurers, and their respective officers, directors,  
14 shareholders, employees, agents and attorneys, from all known claims,  
15 obligations, liabilities, indebtedness, actions and causes of action now existing,  
16 and known. (Exhibit A at ¶ 6.)

17 (g) The Bankruptcy Court shall retain jurisdiction to enforce and construe the  
18 terms and provisions of this Agreement. The Bankruptcy Court shall further  
19 retain jurisdiction to enforce and construe any and all applicable terms or  
20 provisions of the Court's Preliminary Injunction (Adversary Proceeding No.  
21 8:23-ap-01046-SC, Dkt. No. 70), including any and all applicable changes or  
22 modifications subsequently made so long as the Preliminary Injunction  
23 remains in place and has not been vacated by Court order. (Exhibit A at ¶ 12.)

24 **IV.**

25 **THE COURT IS AUTHORIZED TO APPROVE THE SETTLEMENT**

26 The authority granted to a trustee to compromise a controversy or agree to a settlement is set  
27 forth in Federal Rule of Bankruptcy Procedure 9019(a) ("Rule 9019"), which provides in pertinent  
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1 part that “[o]n motion by the [Trustee] and after notice and a hearing, the court may approve a  
2 compromise or settlement.” Under these circumstances, the decision of whether a compromise should  
3 be accepted or rejected lies within the sound discretion of the court. *In re Carson*, 82 B.R. 847, 852  
4 (Bankr. S.D. Ohio 1987); *In re Hydronic Enterprise, Inc.*, 58 B.R. 363, 365 (Bankr. D.R.I. 1986); *In*  
5 *re Mobile Air Drilling Co., Inc.*, 53 B.R. 605, 607 (Bankr. N.D. Ohio 1985).

6 The Court of Appeals for the Ninth Circuit has long recognized that “[t]he bankruptcy court  
7 has great latitude in approving compromise agreements.” *Woodson v. Fireman’s Fund Ins. Co. (In re*  
8 *Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). “The purpose of a compromise agreement is to allow  
9 the [Trustee] and the creditors to avoid the expenses and burdens associated with litigating sharply  
10 contested and dubious claims.” *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1380-81  
11 (9th Cir. 1986), *cert. denied* 479 U.S. 854 (1986). Accordingly, in approving a settlement agreement,  
12 the court need not conduct an exhaustive investigation of the claims sought to be compromised. *See*  
13 *United States v. Alaska National Bank (In re Walsh Constr., Inc.)*, 669 F.2d 1325, 1328 (9th Cir.  
14 1982). Rather, it is sufficient that the court find that the settlement was negotiated in good faith and  
15 is reasonable, fair, and equitable. *See In re A & C Properties*, 784 F.2d at 1381.

16 The Court of Appeals for the Ninth Circuit has identified the following factors for  
17 consideration in determining whether a proposed settlement agreement is reasonable, fair, and  
18 equitable:

- 19 (h) the probability of success in the litigation;
- 20 (i) the difficulties, if any, to be encountered in the matter of collection;
- 21 (j) the complexity of the litigation involved, and the expense, inconvenience, and  
22 delay necessarily attending it;
- 23 (k) the paramount interest of the creditors.

24 *In re A & C Properties*, 784 F.2d at 1381.

25 A court should not substitute its own judgment for the judgment of the trustee. *Matter of*  
26 *Carla Leather, Inc.*, 44 B.R. 457, 465 (Bankr. S.D.N.Y. 1984). A court, in reviewing a proposed  
27 settlement, is not to decide the numerous questions of law and fact but rather to canvass the issues to  
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determine whether the settlement falls below the lowest point in the range of reasonableness. *In re W.T. Grant & Co.*, 699 F.2d 599, 608 (2nd Cir. 1983), accord, *Newman v. Stein*, 464 F.2d 689, 693 (2nd Cir. 1972). The court should not necessarily conduct a “mini-trial” on the merits of the underlying cause of action. *Matter of Walsh Const., Inc.*, 669 F.2d 1325, 1328 (9th Cir. 1982); *In re Blair*, 538 F.2d 849 (9th Cir. 1976). “It is well established that compromises are favored in bankruptcy.” *In re Lee Way Holding Co.*, 120 B.R. 881, 891 (Bankr. S.D. Ohio 1990).

For all of the reasons set forth above and further explained below, Trustee believes the Agreement is reasonable, fair and equitable, and in the best interests of the Estate and its creditors. A review of the factors outlined below further supports approval of the Agreement.

**A. PROBABILITY OF SUCCESS IN LITIGATION**

2. Trustee does not anticipate litigation to be necessary in this matter. (Marshack Decl. ¶¶ 6-7). At its core, Trustee’s Motion is essentially a settlement without a stipulated judgment. Proving the necessity of returning to Trustee the excess LPG funds held by Payliance presents no difficulty, and avoiding the cost to the Estate of doing so is the intent of the Agreement and Trustee’s Motion. Payliance and Trustee are in full agreement about the appropriate disposition of funds implicated by this Motion. (*Id.*; Richins Decl. ¶¶ 3-15). The potential cost of further litigation, including litigating the Indemnity Claim, significantly outweighs the cost of the Compromised Indemnity Claim and settlement for turnover provided for in the Agreement. (Marshack Decl. ¶¶ 6-7). There are no other interested parties, and Trustee does not anticipate any objection to the approval of the Agreement. (*Id.*) Thus, this factor favors approving the Agreement.

**B. DIFFICULTIES IN COLLECTION**

As noted, there are no remaining controversies in this matter between Trustee and Payliance. (Marshack Decl. ¶ 8). Once the Agreement is approved, the parties fully intend to timely perform their obligations under the Agreement as set forth herein. Barring any unforeseen obstacles, there should be no difficulty in collections. Thus, this factor weighs in favor of approving the Agreement.

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1 **C. COMPLEXITY OF LITIGATION**

2 The issues involved in the Agreement are straightforward. The amounts pulled and/or held by  
3 Payliance has been established through accounting records. (See Richins Decl. ¶¶ 3-15; Freedman  
4 Decl. ¶¶ 2-6; 1046 Dkt. Nos. 325-4, Exh. 8 at pp. 92-86, 493-11 at p. 12). As there is full agreement  
5 between Trustee and Payliance on all relevant facts as well as full agreement on the appropriate  
6 disposition of the LPG estate funds, there is little to no complexity in the issues presented. In fact, the  
7 Agreement is purposefully limited in scope so as to minimize the possibility of unwarranted  
8 complications. As such, this factor weighs in favor of approving the Agreement.

9 **D. BEST INTEREST OF CREDITORS**

10 Approving the Agreement is in the best interest of LPG's creditors because Trustee will be  
11 recovering one-hundred percent (100%) of Debtor's assets held by Payliance after contractual  
12 chargebacks and the Compromise Indemnity Claim are deducted. (Richins Decl. ¶¶ 3-15; Marshack  
13 Decl. ¶ 5(a)). Approving the Agreement, therefore, guarantees an infusion of capital to the  
14 Bankruptcy Estate that will be distributed to Debtor's creditors without the delay or need to expend  
15 Estate funds through litigation. Trustee submits that the Agreement represents a valid exercise of his  
16 business judgment, is fair and reasonable, and in the best interests of Debtor's creditors. Thus, this  
17 factor weighs in favor of approving the Agreement.

18 **V.**

19 **LPG ASSETS ACQUIRED BY PAYLIANCE AFTER THE PETITION DATE ARE FREE**  
20 **AND CLEAR**

21 Bankruptcy Code section 552(a) provides that "property acquired by the estate or by the  
22 debtor after the commencement of the case is not subject to any lien resulting from any security  
23 agreement entered into by the debtor before the commencement of the case." 11 U.S.C. § 552(a).  
24 Generally, courts view 11 U.S.C. section 552(a) broadly; *see also Alliance Capital Management L.P.*  
25 *v. County of Orange (In re County of Orange)*, 189 B.R. 499, 503 (C.D. Cal. 1995).

26 Here, the funds held by Payliance as a result of processing Guardian's ACH transactions and  
27 Greyson's Reserve account totaling \$453,570 were acquired post-petition. This includes \$438,570 in  
28

1 post-petition ACH debits on behalf of Guardian Processing and Greyson's \$15,000 Reserve deposit  
2 also made post-petition. These funds are derived from post-petition ACH transactions and transfers  
3 initiated by Guardian and with the Greyson Reserve account being funded with post-petition ACH  
4 receivables initiated by Prime Logix, LLC and subsequently transferred to BAT and Payliance.  
5 Security interests in future receivables terminates as of the petition date. *See, e.g., CapCall, LLC v.*  
6 *Foster (In re Shoot the Moon, LLC)*, 635 B.R. 797, 830 (Bankr. D. Mont. 2021) citing 11 U.S.C. §  
7 552. Of the funds to be turned over by Payliance pursuant to the Agreement, \$453,570 do not,  
8 therefore, represent proceeds, products, offspring, or profits from any secured and perfected security  
9 interest that existed pre-petition. 11 U.S.C. § 552(b). As such, this Court should order that these funds  
10 are free and clear of any and all secured liens.

11 **VI.**

12 **THE SETTLEMENT IS A RESULT OF GOOD FAITH ARMS' LENGTH**  
13 **NEGOTIATIONS**

14 Trustee further submits that the Agreement and the Compromised Indemnity Claim results  
15 from a good faith and arms' length negotiation between Trustee and Payliance. (Marshack Decl. ¶¶  
16 6-9.) The Agreement is not the result of any collusion between Trustee, Payliance, or any other party.  
17 (*Id.* ¶ 9.)

18 **VII.**

19 **CONCLUSION**

20 The Trustee respectfully requests that the Bankruptcy Court enter an order providing for the  
21 following relief:

- 22 (a) Granting the motion;
- 23 (b) Approving the terms of the Agreement, a copy of which is attached as Exhibit  
24 A to the Declaration of Richard Marshack filed concurrently herewith, and  
25 authorizing Trustee to enter into the Agreement;
- 26 (c) A finding that Payliance is entitled to a Compromised Indemnity Claim in the  
27 total amount of \$59,000 that was the result of good faith negotiations;  
28

(d) A finding that of the \$582,460 remaining in the Reserves to be turned over to  
the Trustee of which \$453,570 is without liens; and

(e) For such other relief as this Court may deem just and proper.

Dated: August 20, 2024

Respectfully submitted,

DINSMORE & SHOHL LLP

By: /s/ Jeremy B. Freedman

Christopher B. Ghio

Jeremy B. Freedman

Special Counsel to Richard A.

Marshack

Chapter 11 Trustee for the

Bankruptcy Estate of The

Litigation Practice Group PC

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 655 W. Broadway, Suite 800, San Diego, California 92101

A true and correct copy of the foregoing document: **NOTICE OF CHAPTER 11 TRUSTEE, RICHARD A. MARSHACK'S NOTICE OF MOTION AND MOTION FOR ORDER APPROVING COMPROMISE OF CONTROVERSY PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 AS TO DEFENDANT PAYLIANCE, LLC; MEMORANDUM OF POINTS AND AUTHORITIES** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On August 20, 2024, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On August 20, 2024, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

YCIR Inc.  
Hector Ocegueda  
535 S Barranca St #4  
Covina, CA 91723

**JUDGE'S COPY**

The Honorable Scott C. Clarkson  
United States Bankruptcy Court  
Central District of California  
Ronald Reagan Federal Building and Courthouse  
411 West Fourth Street, Suite 5130 / Courtroom 5C  
Santa Ana, CA 92701-4593

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on August 20, 2024, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

August 20, 2024  
Date

Bonnie Connolly  
Printed Name

/s/ Bonnie Connolly  
Signature

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